

ASSEMBLY BILL

No. 676

Introduced by Assembly Member Calderon

February 25, 2015

An act to add Chapter 3.95 (commencing with Section 1045) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 676, as introduced, Calderon. Employment: discrimination: status as unemployed.

Existing law creates the Division of Labor Standards Enforcement in the Department of Industrial Relations for the purpose of enforcing labor laws. Existing law prohibits various forms of employment discrimination with respect to the personal characteristics of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

This bill, on and after July 1, 2016, would prohibit an employer, an employment agency, or a person who operates an Internet Web site for posting jobs in this state to publish an advertisement or announcement for a job that states or indicates that current employment is a requirement, unless this is based on a bona fide occupational qualification. The bill would prohibit an employer or employment agency from asking an applicant for employment to disclose, orally or in writing, information concerning the applicant's current employment status, except as specified. The bill would prohibit an employer, an employment agency, or a person operating an Internet Web site for posting jobs from interfering with, or discriminating against, a person exercising these rights. The bill would subject an employer, an

employment agency, or a person who operates an Internet Web site for posting jobs in this state who violates the above provisions to civil penalties that escalate with the number of violations. The bill would provide that a private right of action is not authorized for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.95 (commencing with Section 1045)
2 is added to Part 3 of Division 2 of the Labor Code, to read:

3
4 CHAPTER 3.95. EMPLOYMENT DISCRIMINATION ON THE BASIS
5 OF EMPLOYMENT STATUS
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7 1045. For purposes of this chapter, the following definitions
8 apply:

9 (a) "Employer" means the state or any political or civil
10 subdivision of the state and any person, as defined in Section 18,
11 who directly or indirectly, or through an agent or any other person,
12 employs or exercises control over the wages, hours, or working
13 conditions of any person.

14 (b) "Employment agency" has the same meaning as defined in
15 Section 1812.501 of the Civil Code.

16 (c) "Employment status" means an individual's present
17 unemployment, regardless of the length of time that the individual
18 has been unemployed.

19 1046. (a) Unless based on a bona fide occupational
20 qualification, an employer shall not do either of the following:

21 (1) Publish in print, on the Internet or in any other medium, an
22 advertisement or announcement for any job that includes a
23 provision stating or indicating that an individual's current
24 employment is a requirement for the job.

25 (2) Affirmatively ask an applicant for employment to disclose,
26 orally or in writing, information concerning the applicant's current
27 employment status until the employer has determined that the
28 applicant meets the minimum employment qualifications for the
29 position, as stated in the published notice for the job.

1 (b) Unless based on a bona fide occupational qualification, an
2 employment agency shall not do any of the following:

3 (1) Publish in print, on the Internet or in any other medium, an
4 advertisement or announcement for any job that includes a
5 provision stating or indicating that an individual's current
6 employment is a requirement for a job.

7 (2) Limit, segregate, or classify an individual in any manner
8 that may limit that individual's access to information about jobs
9 or referrals for consideration of jobs because of the individual's
10 employment status.

11 (3) Affirmatively ask an applicant for employment to disclose,
12 orally or in writing, information concerning the applicant's current
13 employment status until the employer has determined that the
14 applicant meets the minimum employment qualifications for the
15 position, as stated in the published notice for the job.

16 (c) Unless based on a bona fide occupational qualification, a
17 person who operates an Internet Web site for posting jobs in this
18 state shall not publish on that Internet Web site an advertisement
19 or announcement for any job that includes a provision stating or
20 indicating that an individual's current employment is a requirement
21 for a job.

22 1047. This chapter shall not be construed to prohibit an
23 employer, employment agency, or a person who operates an
24 Internet Web site for posting jobs in this state, or an agent,
25 representative, or designee of that employer, employment agency,
26 or Internet Web site, from:

27 (a) Publishing in print, on the Internet or in any other medium,
28 an advertisement or announcement for any job that contains any
29 provision setting forth qualifications for a job, including:

30 (1) Holding a current and valid professional or occupational
31 license, certificate, registration, permit, or other credential.

32 (2) Requiring a minimum level of education or training or
33 professional, occupational, or field experience.

34 (3) Stating that only individuals who are current employees of
35 the employer will be considered for that job.

36 (b) Setting forth qualifications for any job, including:

37 (1) Holding a current and valid professional or occupational
38 license, certificate, registration, permit, or other credential.

39 (2) Requiring a minimum level of education or training or
40 professional, occupational, or field experience.

1 (3) Stating that only individuals who are current employees of
2 the employer will be considered for that job.

3 (c) Obtaining information regarding an individual's employment,
4 including recent relevant experience.

5 (d) Having knowledge of a person's employment status.

6 (e) Inquiring as to the reasons for an individual's employment
7 status.

8 (f) Refusing to offer employment to a person because of the
9 reasons underlying an individual's employment status.

10 (g) Otherwise making employment decisions pertaining to that
11 individual.

12 1048. An employer, an employment agency, or a person
13 operating an Internet Web site for posting jobs shall not do either
14 of the following:

15 (a) Interfere with, restrain, or deny the exercise of, or the attempt
16 to exercise, any right provided under this chapter.

17 (b) Discriminate against any individual because the individual:

18 (1) Opposed any practice made unlawful by this chapter.

19 (2) Has instituted, or caused to be instituted, any proceeding
20 under or related to this chapter.

21 (3) Has provided, or is about to provide, any information in
22 connection with any inquiry or proceeding relating to any right
23 provided under this chapter.

24 (4) Has testified, or is about to testify, in any inquiry or
25 proceeding relating to any right provided under this chapter.

26 1049. An individual aggrieved by a violation of this chapter
27 may file a complaint with the Labor Commissioner. The Labor
28 Commissioner may impose a civil penalty against any employer,
29 employment agency, or person operating an Internet Web site for
30 posting jobs that the commissioner finds to be in violation of this
31 chapter. An employer, employment agency, or person operating
32 an Internet Web site for posting jobs that violates any provision
33 of this chapter shall be subject to a civil penalty of one thousand
34 dollars (\$1,000) for the first violation of this chapter, five thousand
35 dollars (\$5,000) for the second violation, and ten thousand dollars
36 (\$10,000) for each subsequent violation.

37 1049.5. Notwithstanding any provision of law, this chapter
38 does not create or authorize a private right of action for a violation
39 of this chapter.

1 1049.7. This chapter shall become operative on July 1, 2016.

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